APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 46
HCA/2024/9/XM

Lord Doherty
Lord Matthews
Lady Wise

OPINION OF THE COURT

delivered by LORD DOHERTY

in

the application for leave to appeal

by

RF

Applicant

against

THE LORD ADVOCATE, REPRESENTING THE KINGDOM OF NORWAY

Respondent

Applicant: Loosemore; Good and Stewart
Respondent: C Edward KC; Crown Agent

25 October 2024

Introduction

[1] The applicant was born in Pakistan. He married his first wife, X, in Pakistan in 1992 and they moved to Norway, where she was a national. They lived together there until they separated in 2015. The applicant became, and he remains, a Norwegian national. He married his current wife, Y, a national of Pakistan, in Norway in March 2017. In October 2018 he moved to live in London where he obtained part-time employment. Y lived

in Pakistan, where the applicant visited her regularly. In about 2020 she joined him in London.

[2] In 2020 X complained to the police in Oslo that the applicant had raped her repeatedly between 1992 and 2015; that he used physical violence towards her and abused her verbally and in other ways; and that he had been violent and abusive towards their four children. On a visit to Oslo not long after the complaint was made the applicant discovered a letter to him from the police informing him of the allegations. He was interviewed by the police about them. He instructed a Norwegian lawyer.

[3] In May 2023 the applicant and Y moved from London to a town in the central belt of Scotland. The applicant obtained full-time employment in a responsible job.

[4] Meanwhile criminal proceedings against the applicant were proceeding in Oslo. His lawyer made several statements to the press on his behalf about them. A hearing at Oslo District Court was assigned to take place on 21 November 2023. The applicant failed to attend the hearing. The court declared that he was a fugitive from prosecution.

[5] An Interpol Red Notice was published by the Norwegian authorities on 29 November 2023. It set out the charges which the applicant faces. Charge I is that between 1993 and 2015 he repeatedly forced X to have vaginal intercourse with him against her will, physically assaulting her and otherwise abusing her. The maximum sentence that could be imposed on conviction of that charge is 21 years' imprisonment. Charge II(a) is that during the same period he repeatedly physically assaulted her, abused her, threatened her and maltreated her. Both charges narrate that the applicant's conduct damaged X's health and caused her to develop post-traumatic stress disorder. Charge II(b) is that between 1993 and 2015 he abused his daughter M by means of physical violence, threats and abusive behaviour, as a result of which she developed post-traumatic stress disorder.

Charge II(c) is that between 1993 and 2015 he abused his son J by means of physical violence, threats and abusive behaviour, as a result of which J developed recurrent depression. Charge II(d) is that between 2000 and 2015 he abused his daughter S by means of physical violence and abusive behaviour, as a result of which she has developed post-traumatic stress syndrome. Charge II(e) is that between 2004 and 2015 he abused his son W by means of physical violence and abusive behaviour as a result of which he has developed recurring depressions, resulting in significant and enduring reduction in his general ability to function. The maximum sentence for each of charges II(a) to II(e) is 6 years' imprisonment. The Red Notice was duly followed by a valid request for extradition, which was in turn duly followed by certification of the request in terms of section 70 of the 2003 Act.

[6] Police in Scotland sought to locate and arrest the applicant. Initially, those attempts were unsuccessful. In about December 2023 the applicant left his job. He told his employers that he was returning to Pakistan. In fact, he and Y moved to another town not far away. He was aware before he moved that the police had been looking for him. When the police discovered his new home and attended there he hid under a bed to try and avoid detection. The police found him and he was arrested. On 31 January 2024 he appeared before the sheriff at Edinburgh. He did not consent to extradition. He was remanded in custody.

The extradition hearing

[7] A full extradition hearing took place on 9 May and 27 June 2024. Extradition was opposed on the grounds (i) that the applicant could not receive an article 6 ECHR compliant trial in Norway; (ii) that extradition would breach the applicant and Y's article 8 rights to family life. The sheriff was required to proceed under section 87 of the 2003 Act, which provides:

> "**87 Human rights**
> (1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
> (3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited."

[8] It is unnecessary to elaborate upon the article 6 ground, because it forms no part of the proposed appeal to this court. While the article 8 rights of both the applicant and Y were founded upon before the sheriff, the applicant's focus at the hearing was on Y's circumstances. It was maintained that Y suffered from physical and mental ill-health as a result of which she was extremely vulnerable and was dependent upon the applicant to care for her.

[9] The applicant, Y, and Dr Simon Petrie, a chartered clinical psychologist, gave evidence.

[10] The applicant said that when he discovered that the police were investigating X's complaints he attended for interview. After he had spoken to the police he instructed a Norwegian lawyer. He claimed to be unaware of the hearing of 21 November 2023 in advance of it taking place. He also claimed he was unaware that his lawyer had made several media statements on his behalf. Y suffered from poor physical and mental health, so much so that he gave up his work to look after her. The timing of his leaving his job and moving home had nothing to do with the police looking for him - it was just a coincidence. When the police came he had been ready to answer the door to them. However, at Y's behest he hid under a bed.

[11] The sheriff described Y's demeanour, physical presentation and general manner in answering questions:

> "17. [Y] used a cane to make her way to the witness box. She had a pronounced tremor with one arm. She began shaking badly when explaining that she had difficulties and pain in her leg and arm. She gradually became more upset as her examination-in-chief continued, wailing and sobbing at one point.
> 18. [Y]'s answers would occasionally digress into her addressing pleas directed at me not to 'punish' her husband for her 'mistakes' and not to 'leave me by myself'. Her cross-examination was conducted in a circumspect manner. When it was concluded, she volunteered an emotional statement as to what occurred when the police came to their home on two occasions, which was difficult to follow and which had no connection to anything asked of her in cross-examination. Dr Petrie, when he interviewed her, found her to be 'highly anxious, … tremulous, tearful and upset throughout … in terms of her general demeanour, body language and communication style' (report, para. 5.13), comments that could apply equally to her presentation in court."

[12] Y indicated that she had never been in employment. She suffered from depression, anxiety attacks and joint pain. She had an appointment in respect of her heart. Her health had got worse since she came to Scotland. She had not made friends here. Since the applicant's imprisonment her sister had been helping her; but her sister's home was in London and she suffered from ill-health. Y was scared at the prospect of the applicant being extradited. She did not know what she would do if that happened.

[13] Dr Petrie had prepared a report dated 1 May 2024 which he spoke to in evidence. When he saw Y at home on 22 March 2024 her niece and brother-in-law were residing with her and were looking after her. They had travelled from their home in Spain. Dr Petrie interviewed Y and her niece. Y presented as being in a very fragile emotional state. She appeared highly anxious, tearful and upset. He opined that Y had very poor mental health, with clinically significant levels of anxiety and depression, which appeared to be chronic. If the applicant were to be extradited it was highly likely that Y's health would deteriorate. He was very concerned as to her psychological condition and capacity to support herself.

The outlook for Y would be negative, uncertain and bleak. She would need urgent medical assessment and, if possible, close family support; but he was concerned that there did not appear to be a plan in place.

[14] The sheriff had reservations about the credibility of both the applicant and Y. In particular, he was not prepared to accept the applicant's evidence that he had not sought to evade arrest. He found it difficult to accept that Y would have been prepared to answer the door to speak to the police if she was as frail as she suggested she was. He also had some reservations as to Dr Petrie's evidence, in particular because of his willingness to offer an unqualified opinion that the applicant and Y were credible and that there was no reason to doubt their authenticity. However, since Dr Petrie had not been challenged on this point in cross-examination, and because Y's credibility was not squarely challenged by the respondent during her evidence (perhaps, the sheriff thought, because of her distressed presentation), the sheriff decided to proceed on the basis of Dr Petrie's assessment of Y's condition. It followed that the impact of the applicant's extradition on Y would be negative and bleak. He accepted that it would be likely to exacerbate the distress which she was suffering. However, the sheriff did not accept it had been proven that Y's health problems could not be managed or substantially mitigated by appropriate treatment from NHS health services. The interference with her article 8 rights which would result from extradition did not outweigh the strong public interest in extraditing the applicant to stand trial on the grave charges which he faced. He exercised the power conferred on him by section 87(3) of the 2003 Act to send the applicant's case to the Scottish Ministers for their decision (section 93 of the 2003 Act) whether he should be extradited to Norway to face trial there.

[15] The sheriff notes that Y was present in court when he delivered his decision, and that she immediately fell to the ground, apparently unconscious.

The Scottish Ministers' decision

[16] On 13 August 2024 the Scottish Ministers decided that the applicant should be extradited.

The proposed appeal

[17] This is an application for leave to appeal in terms of section 103(4)(b) of the 2003 Act against the sheriff's decision. The court heard arguments in relation to leave and in relation to the merits of the appeal.

[18] The relevant appeal provisions of the 2003 Act are sections 103 and 104, which provide:

> "**103 Appeal where case sent to Secretary of State**
> (1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision.
> …
> (3) The relevant decision is the decision that resulted in the case being sent to the Secretary of State.
> (4) An appeal under this section—
> (a) may be brought on a question of law or fact, but
> (b) lies only with the leave of the High Court.
> …
>
> **104 Court's powers on appeal under section 103**
> (1) On an appeal under section 103 the High Court may—
> (a) allow the appeal;
> (b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;
> (c) dismiss the appeal.
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—
  (a) the judge ought to have decided a question before him at the extradition hearing differently;
  (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—
  (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  (b) the issue or evidence would have resulted in the judge deciding a question before him at the extradition hearing differently;
  (c) if he had decided the question in that way, he would have been required to order the person's discharge.

…"

[19] In support of the application the applicant lodged Y's recent GP records, an undated statement from Y, and a supplementary report from Dr Petrie dated 21 October 2024. These were not intimated to the respondent until the day before the hearing.

[20] The GP records included entries recording that Y had recently been referred to social services, and that on 18 October 2024 social services had called the GP seeking further information about her. On the same date Y advised her GP that she proposed to go to her sister in London. The court was also taken to entries about a self-harming incident on 17 July 2024. The relevant notes state that Y had several lateral cuts to her left forearm, that there was no active bleeding, and that the wounds were stitched and dressed. On assessment there were no acute psychiatric symptoms and no clinical indication for admission. Y was discharged with advice as to coping strategies and was advised as to how to access services within and out of hours if she required support. She was referred to the community mental health team.

[21] In her statement Y said that since 27 June 2024 her mental health has deteriorated. On 17 July 2024 she "tried to commit suicide". She made cuts on an arm with a kitchen knife. She "passed out". She was taken to hospital by ambulance but was later discharged home. She said that she still had suicidal thoughts and that she was not coping without the

applicant. Her sister and niece had been helping her, as had F, a lady from the local Muslim community; but her niece had returned to Spain, and her sister and F could not look after her permanently. She engaged with her GP on a regular basis and had been prescribed medication. She had been referred to NHS psychiatric services, where she was on the waiting list. The statement concluded by saying that if the applicant is extradited she would not be able to cope without him.

[22] In his supplementary report Dr Petrie indicated that he visited Y at home again on 10 October 2024. He had access to a copy of her GP records. F, who Dr Petrie stated is medically qualified, was present. She had been offering support and care to Y. Y's sister had been living with her to help her. She had recently returned to London for medical treatment, but she was due back soon. Dr Petrie noted that Y presented as being in an extremely fragile emotional state. Y informed him of an attempt by her to cut her wrist, and he was shown "some light scarring" on one wrist. He noted that the hospital psychiatric admission assessment on 17 July 2024 stated that there was no clinical indication for admission to hospital; and that at that time coping strategies were discussed with her and she was referred to the community mental health team. F stated to him that Y needed support for almost all aspects of functioning, but was able to go to the toilet independently. F tried to take Y out for a short walk each day. She expressed concern to Dr Petrie that because of language and cultural barriers Y had not been engaging with support through the NHS. Dr Petrie concluded that Y continued to experience significant mental health issues, namely clinically significant levels of anxiety and depression. He considered her psychological condition to be chronic and severe and to have deteriorated since his assessment in March 2024. As had been the position previously, there seemed to be an absence of a longer-term plan to help her cope and recover. In his opinion extradition

would be highly likely to lead to further deterioration in Y's mental health. The outlook for her mental health would be "negative, uncertain and bleak". Y seemed to be "somewhat disengaged" from NHS mental health services. In his view those services were "unlikely to be able to alleviate the negative consequences upon [Y] of [the applicant]'s extradition". If she were to attempt suicide and her risk of further self-harm was thought to be high, she would be likely to be admitted to hospital where she would be offered more intensive professional care and support. However, in the longer term it was likely that the burden of her care would continue to fall mainly upon friends and family.

[23] Ms Loosemore moved for the new material to be received. The basis of the proposed appeal was that the conditions in section 104(4) of the 2003 Act were satisfied. The material was evidence which had not been available at the extradition hearing (s 104(4)(a)). She submitted that, had it been available to him, it would have resulted in the sheriff deciding a question before him at the extradition hearing differently (s 104(4)(b)). He would have decided that Y's article 8 rights outweighed the strong public interest in the applicant being extradited. He would have required to order his discharge (s 104(4)(c)). The charges which the applicant faces are very serious, but some time had now passed since the alleged offending. He had come to the United Kingdom in 2018, 2 years before a complaint had been made to the police. It followed that he was not a fugitive. He had lived a blameless life in the United Kingdom. The new material would have tipped the balance in favour of Y's article 8 rights prevailing. Reference was made to *H(H)* v *Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, Lady Hale at paragraphs 8, 30 and 33; *Polish Judicial Authority* v *Celinski* [2016] 1 WLR 551; *DV* v *Lord Advocate (on behalf of the Government of Romania)* 2020 SCCR 355; *PK* v *Lord Advocate (on behalf of the Republic of Poland)* 2024 HCJAC 25.

[24] In response, Mr Edward submitted that the new evidence was not materially different from the evidence which had been before the sheriff. While in his supplementary report Dr Petrie spoke to Y's condition having deteriorated since he last saw her, and there had been an episode of deliberate self-harming since the extradition hearing, Dr Petrie's prediction as to what would happen if the extradition went ahead was substantially the same as it had been when he gave evidence, *viz* that the outlook for Y would be negative, uncertain and bleak. It was noteworthy that Dr Petrie appeared to pay no cognisance to the likely involvement of social services (especially if family and friends did not continue to offer the same care they had provided to date). He seemed unduly dismissive of the possible mitigatory effects of NHS treatment. In any case, Y's article 8 rights did not outweigh the very strong public interest in the applicant being extradited to face trial on very serious charges. The charges here were far more serious than the offences in *PK* v *Lord Advocate*. The interference with Y's article 8 rights was necessary in a democratic society (article 8(2)). It was justified and proportionate. Section 104(4)(b) and (c) were not satisfied.

Decision and reasons

[25] At the conclusion of the hearing we refused the application for leave to appeal. We indicated that we would provide our reasons in writing. We do so now.

[26] Article 8 of the ECHR provides:

> " Article 8
>
> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or

> the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[27] The general principles relating to the application of article 8 in the context of extradition proceedings are set out in *Norris* v *Government of the United States of America (No 2)* [2010] 2 AC 487 and *H(H)* v *Deputy Prosecutor of the Italian Republic, Genoa.* The leading Scottish case is *BH* v *Lord Advocate* 2012 SC (UKSC) 308 (reported at [2013] 1 AC 413, and in some other reports, as *H* v *Lord Advocate*), which was heard together with *H(H).* In England and Wales a Divisional Court presided over by the Lord Thomas of Cwmgiedd CJ provided further guidance in *Polish Judicial Authority* v *Celinski* [2016] 1 WLR 551. In *DV* v *Lord Advocate on behalf of the Government of Romania* 2020 SCCR 355 (also reported as *V* v *Lord Advocate* 2020 SLT 1161) at para [34] this court accepted the correctness and applicability to Scotland of the principles derived from *Norris* and *H(H)* which were set out in *Celinski*. That case proposed a "structured approach" with a "balance sheet" of factors for and against extradition after having made findings of relevant facts. It also stressed (paragraph 14(iii)) that it should rarely be necessary to cite (at the extradition hearing or in a subsequent appeal) decisions on article 8 which were made in other cases, as these would invariably be fact specific and the principles to be applied were those set out in *Norris* and *H(H).* We would add that in Scotland it may be more accurate to say that the principles are set out in *Norris, H(H)* and *H* v *Lord Advocate*.

[28] In *H* v *Lord Advocate* Lord Hope of Craighead DPSC opined in relation to the weight to be given to article 8 rights in extradition cases:

> "[49] …The public interest in giving effect to a request for extradition is a constant factor in cases of that kind. Great weight will always have to be given to it, and the more serious the offence the greater will be that weight… …

> [58] … It is well established that extradition may amount to a justified interference under Art 8(2) if it is in accordance with the law, is pursuing the aims of the prevention of disorder and crime and is necessary in a democratic society (*Launder v UK*, para 3; *Aronica v Germany; King v UK*, para 29)."

[29] In *H(H)* Lady Hale drew, *inter alia*, the following conclusions from *Norris* v *Government of the United States of America (No 2)* [2010] 2 AC 487 in relation to article 8 claims made in extradition proceedings:

> "8. … (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no safe havens to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

At paragraph 30, in relation to the question whether a person's extradition would be compatible with the Convention rights, she observed:

> "30. In answering that question, the court would be well advised to adopt the same structured approach to an article 8 case as would be applied by the Strasbourg court. First, it asks whether there is or will be an interference with the right to respect for private and family life. Second, it asks whether that interference is in accordance with the law and pursues one or more of the legitimate aims within those listed in article 8.2. Third, it asks whether the interference is 'necessary in a democratic society' in the sense of being a proportionate response to that legitimate aim. In answering that all-important question it will weigh the nature and gravity of the interference against the importance of the aims pursued. In other words, the balancing exercise is the same in each context: what may differ are the nature and weight of the interests to be put into each side of the scale."

At paragraph 32 she stressed:

> "… the test is always whether the gravity of the interference with family life is justified by the gravity of the public interest pursued…".

At paragraph 167 Lord Wilson noted:

> "… several overlapping considerations which combine to confer upon the UK's extradition arrangements their profound importance: (a) perpetrators of crimes should be punished; (b) crime is deterred by the likelihood of punishment; (c) cross-border crime is increasing; (d) the movement of criminals across borders has become easier; (e) inter-state co-operation is increasingly necessary in order to combat crime and to bring criminals to justice; (f) states which offer sanctuary to criminals substantially undermine the efforts of the others to eliminate any advantage in remaining in, or indeed escaping to, a jurisdiction other than that of the prosecuting court; and (g) the UK should adhere to its bilateral (or multilateral) treaty obligations and its breaches or perceived breaches may generate a more widespread unravelling of them on both (or all) sides. The especial importance of adherence to arrangements for extradition is written across all the judgments in the *Norris* case, and one could well argue that it transcends even the importance of immigration control. Of course I accept that an effective system of removal, or deportation, from the UK of a foreign citizen who has had no right, or has forfeited his right, to remain here carries an importance which extends well beyond his particular circumstances; but the destructive effects on societies of crime are far less plainly and directly countered by immigration control than by adherence to arrangements for extradition."

[30] In *Celinski* (at paragraph 6) the court referred back to what Lady Hale had said in sub-paragraphs (3), (4) and (5) of paragraph 8 of *H(H)*. It stressed that it was important for judges to bear in mind when applying the principles set out in *Norris* and *H(H)* (i) that *H(H)* concerned cases involving the interests of children (paragraph 8); and (ii) that the public interest in ensuring that extradition arrangements are honoured is very high, as is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice (paragraph 9).

[31] We turn then to consider the application with these principles in mind.

[32] We are not surprised that the sheriff had some reservations about the evidence of the applicant and Y, and about aspects of Dr Petrie's evidence. Be that as it may, he proceeded on the basis that he ought to accept the evidence of Y and Dr Petrie. Nevertheless, he determined that the interference with Y's article 8 rights which would be caused by the applicant's extradition was justified and proportionate. It was not suggested that that

decision was erroneous in fact or in law. Rather, it was argued that had he had the advantage of the additional material he would have been bound to have decided that extradition would be in breach of Y's article 8 rights.

[33] The new evidence tendered deals with circumstances since the sheriff's decision. We accept that it is evidence that was not available at the extradition hearing (s 104(4)(b)). For that reason we allowed its late receipt.

[34] However, we are not persuaded that the new evidence adds materially to the evidence which the sheriff considered. While there had been some deterioration in Y's condition since Dr Petrie's earlier examination, his prognosis for Y in his supplementary report if the applicant was extradited was not materially different from his prognosis when he gave evidence. Before the sheriff and before this court the prognosis was that Y's mental health was highly likely to deteriorate and that the outlook for her was negative, uncertain and bleak.

[35] We add, though we do not consider it critical to our conclusions, that we see some force in Mr Edward's observations that in the supplementary report Dr Petrie may be unduly dismissive of the possible mitigatory effects of input from social services, NHS services, and family and friends.

[36] We are very far from convinced that the new evidence would have resulted in the sheriff deciding that the factors favouring extradition were outweighed by countervailing factors. It follows that the conditions in section 104(4)(b) and section 104(4)(c) are not satisfied.

[37] Had this court been in the sheriff's shoes, but weighing the "pros" and "cons" of the applicant's extradition on the material now before the court, we would, like the sheriff, have concluded that the case should be sent to the Scottish Ministers for their decision.

[38] The weightiest factor against extradition is the interference with Y's article 8 rights. We are prepared to proceed on the basis that the consequences for her will be severe. Further, less weighty, factors on this side of the balance sheet are the interference with the applicant's article 8 rights; the fact that he did not come to the UK as a fugitive; and that he made a blame-free life for himself here until his apprehension was sought. In our view delay is not a further such factor: we are not persuaded that there was any undue delay in the allegations being reported to the police, or in the Norwegian authorities prosecuting him, or in their seeking his extradition.

[39] There are several weighty factors on the other side of the balance sheet, some of which are formidable. First, the charges which the applicant faces are grave ones, and if convicted he is liable to receive a lengthy sentence of imprisonment. In these respects the applicant's case is very different from the cases of the applicants in *DV* and *PK*. Second, while he was not a fugitive when he first came to the United Kingdom, he did not return to Norway for his trial with the result that the court there has declared him a fugitive. There are good grounds for serious scepticism of his claims to have had no communication from his lawyer about the trial hearing. It may reasonably be inferred that it was a condition of his remaining at liberty that he would attend his trial and that he is in breach of that condition. Third, he took steps to try and avoid apprehension by the police here. Fourth, there is the constant and weighty public interest in extradition. People accused of crimes should be brought to trial. There should be no safe havens to which they can flee in the belief that they will not be sent back. The United Kingdom should honour its treaty obligations to other countries. That public interest always carries great weight, but here the nature and seriousness of the alleged crimes give it very great weight indeed. This is not a case where that weight is diminished by the occurrence of unreasonable delay since

the crimes are said to have been committed, or where the impact upon private and family life has been materially increased by such delay.

[40] In our opinion it is clear that the factors favouring extradition outweigh the countervailing factors.

[41] We add this. If the applicant were to be tried and convicted of similar offences in Scotland, the disposal would be a lengthy prison sentence, notwithstanding the resultant interference with Y's article 8 rights. In light of that, in our view it would be contrary to international comity to refuse to extradite him on the grounds of interference with those rights (cf *H(H),* Lord Judge CJ at paragraph 132).

[42] The interference with article 8 rights is in accordance with the law. It is in pursuance of a legitimate aim, the prevention of disorder and crime. It is necessary in a democratic society - it is a proportionate response to that legitimate aim. The extradition is compatible with the Convention rights of the applicant and Y (section 87(1) of the 2003 Act).

Disposal

[43] For these reasons the application for leave to appeal is refused.